



Paper No. 6

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**OFFICE OF PETITIONS
A/C PATENTS**

In re Application of
Jonathan Schull
Application No. 09/764,293
Filed: January 19, 2001
Attorney Docket No. 58587.000003

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: DECISION DISMISSING
: PETITION
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This is a decision on the petition filed April 5, 2001, requesting that the above-identified application be accorded a filing date of January 19, 2001, with page 8 of the specification as part of the original disclosure.

On January 19, 2001, applicant filed the above-identified application. However, on February 15, 2001, the Office of Initial Patent Examination mailed a "Notice to File Corrected Application Papers" (Notice), stating that the application had been accorded a filing date of January 19, 2001, and requiring applicant to submit substitute drawings in compliance with 37 CFR 1.84. Additionally, the Notice advised applicant that page 8 of the specification appeared to have been omitted.

In response, on April 5, 2001, applicant filed, inter alia, the present petition, a \$130.00 petition fee, and a copy of one (1) page of specification. Applicant explained:

The present application is a continuation of application Serial No. 08/631,411, which was prepared by Applicant himself and filed on April 12, 1996. The specification of the '411 application included an uncaptioned figure in the body of the specification as page 8. Although submitted as a page of the specification, this page was not numbered. A separate drawing sheet was not submitted at the time of filing. When the present continuation application was filed, the filing papers included a copy of the parent application as-filed. This copy thus included the same un-numbered page 8. A separate copy of this page was also submitted as an informal drawing sheet.

Based on the above, the Applicant submits that the present application as filed on January 19, 2001 was complete and was not missing a page as asserted in the Notice to File Corrected Application Papers. The Applicant therefore requests that the entire application be afforded a filing date of January 19, 2001.

Petition dated 04/05/01, p. 2.


It is obvious from the petition that page 8 of the specification was not actually missing on January 19, 2001. Rather, the page of specification was simply unlabeled as a result of applicant's filing error. However, the Notice to File Corrected Application Papers mailed February 15, 2001, was correct in stating that page 8 of the specification appeared to have been omitted. Therefore, the requirement for the submission of the omitted item set forth in the Notice was proper and will not be withdrawn.

Accordingly, the petition is dismissed.

The \$130.00 petition fee will not be refunded because the present petition was not necessitated by any error on the part of the Office.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of January 19, 2001, using the 28 pages of specification filed on that date.

Any inquiries related to this decision should be directed to Petitions Attorney Christina T. Tartera at (703) 306-5589.


Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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